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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,991	01/26/2000	Dean Cheng	081862.P167	9322

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EXAMINER

TODD, GREGORY G

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 07/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/491,991

Applicant(s)

CHENG ET AL.

Examiner

Gregory G Todd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

This is a second office action in response to applicant's amendment filed, 28 April 2003, of application filed, with the above serial number, on 26 January 2000 in which claims 1,3,10,18,20,27,35,37, and 44 have been amended and no new claims have been added. Claims 1-51 are therefore pending in the application.

It is noted that the new marked up copy of claims shows as having pre-amended claim language "advertising" and being replaced with "broadcasting", see at least claim 37; however, the original claim language consisted of --advertise-- and thus examiner respectfully requests applicants to correct and declare any other discrepancies which may be found. Appropriate correction is required.

Claim Objections

Amended claim 37 is objected to because of the following informalities introduced: The terminology "the processor to broadcasting" is suggested to be replaced with --the processor to broadcast--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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2. Claims 1-7, 10-15, 18-24, 27-32, 35-41, and 44-49 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fukuta et al (hereinafter "Fukuta", 5,090,011).

3. As per Claims 1 and 18, Fukuta discloses a method and a computer program product, wherein Fukuta discloses:

determining a congestion status associated with a node in the network (at least col. 4, lines 55-62; col. 7, lines 39-47); and

broadcasting the congestion status to at least one other node in the network (at least Fig. 1, 13).

4. As per Claims 2, 19, and 36.

measuring a node condition (threshold value) at the node, the node condition corresponding to the congestion status (at least col. 12, lines 1-15).

5. As per Claims 3, 20, and 37.

setting a transit flag, the transit flag being accessible to the at least one other node (at least col. 15, lines 19-26).

6. As per Claims 4, 12, 21, 29, 38, and 46.

the node is one of a transit node and a terminating node (at least Fig. 13).

7. As per Claims 5, 13, 22, 30, 39, and 47.

the node is a logical node in a hierarchical network, the logical node corresponding to a peer group of nodes (at least col. 6, lines 14-28; Fig. 11A, 11B, 4, 16).

8. As per Claims 6, 23, and 40.

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the at least one other node is one other logical node in the hierarchical network, the one other logical node corresponding to one other peer group of nodes (packet switch and packet terminal equipment) (at least col. 6, lines 14-28; Fig. 11A, 11B, 4, 16).

9. As per Claims 7, 15, 24, 32, 41, and 49.

the network is an asynchronous mode transfer (ATM) network (at least col. 1, lines 11-20).

10. As per Claims 10 and 27, Fukuta discloses a method and a computer program product to manage congestion in a network, the method comprising:

receiving a congestion status (congestion notice) associated with a node in the network, the congestion status corresponding to a measured node condition at the node and being broadcast by the node; and

routing a call to the node based on the received congestion status (polling) (at least Fig. 26; col. 16, lines 21-40).

11. As per Claims 11, 28, and 45.

accessing a transit flag set by the node, the transit flag corresponding to the congestion status (at least col. 15, lines 54-64)..

12. As per Claims 14, 31, and 48.

routing the call to the node if the node is a terminating node; and

routing the call to the node if the node is a transit node and the congestion status indicates that the node is not congested (polling) (at least Fig. 13, 26; col. 16, lines 21-40).

13. As per Claim 35, Fukuta discloses a system interfacing to a network wherein

Fukuta discloses:

a processor coupled to the network (at least col. 15, lines 19-26); and

a memory coupled to the processor (at least col. 15, lines 19-26), the memory managing congestion in the network, when executed causing the processor to:

determine a congestion status associated with a node in the network (at least col. 4, lines 55-62; col. 7, lines 39-47); and

broadcasting the congestion status to at least one other node in the network (at least Fig. 1, 13).

14. As per Claim 44, Fukuta discloses a system interfacing to a network wherein

Fukuta discloses:

a processor coupled to the network (at least col. 15, lines 19-26); and

a memory coupled to the processor (at least col. 15, lines 19-26), the memory managing congestion in the network, when executed causing the processor to:

receive a congestion status (congestion notice) associated with a node in the network, the congestion status corresponding to a measured node condition at the node and being broadcast by the node; and

route a call to the node based on the received congestion status (polling) (at least Fig. 26; col. 16, lines 21-40).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 8-9, 16-17, 25-26, 33-34, 42-43, and 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuta in view of Rochberger et al (hereinafter "Rochberger", 6,456,600).

17. As per Claims 8, 16, 25, 33, 42, and 50.

Fukuta fails to disclose the node being one of a private network-to-network interface (PNNI) node. However, the use and advantages for using such an interface is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Rochberger. Rochberger discloses using a PNNI interface within his ATM network (at least col. 2, lines 1-15, 36-46; col. 3, lines 16-30). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate and implement the use of a PNNI node in an ATM network being able to monitor and advertise congestion statuses with other nodes on the network since it would allow for the PNNI node to operate over existing network implementations and therefore enhance the expendability and compatibility of Fukuta's network.

18. As per Claims 9, 17, 26, 34, 43, and 51.

Fukuta fails to disclose the transit flag being one of a PNNI topology state parameter. However, the use and advantages for using such an interface is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Rochberger. Rochberger discloses using PNNI topology state packets within his ATM network (at least col. 2, lines 1-15, 36-46; col. 3, lines 16-30). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention

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was made to incorporate and implement the use of a PNNI topology state in an ATM network enabling monitoring and advertising congestion statuses with other nodes on the network since it would allow for the PNNI node to operate over existing network implementations and therefore enhance the expendability and compatibility of Fukuta's network by having the PNNI parameters encapsulated within the packets used on the ATM network.

Response to Arguments

19. Applicant's arguments filed 28 April 2003 have been fully considered but they are not persuasive.

20. The Applicants argue, substantially, that Fukata does not teach or suggest advertising/ broadcasting of a congestion status to another node in a network. However, the language of the claims applicant amends, particularly 1, 10, 18, 27, 35, and 44, merely requires any node to determine a congestion status and then only a single other node to be notified of this status. As Applicant admits, Fukata discloses returning a congestion indicator to the transmission source of the packet, and thus another node in that network. The congestion notice Fukata discloses clearly advertises, broadcasts, indicates, or transmits this status to a different node for that other node to operate accordingly, whether it be to avoid sending any further processing requests to that node or to further notify other nodes in the network, as sending multiple requests would not make sense since it is congested and this would cause further congestion. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed.

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Cir. 1993). Rochberger is used primarily as disclosing the state of a PNNI node. Thus, Applicants argument is not persuasive and the original rejection stands.

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

22. Yamato et al, Cha et al, Fukuta et al, Pajuvirta et al, Mairs et al, Daines et al, Song, Murase, Nishihara, Ginossar, Kirschenbaum, and Milles are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory G Todd whose telephone number is (703)305-5343. The examiner can normally be reached on Monday - Friday 9:00am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703)308-7562. The fax phone numbers for the organization where this application or proceeding is assigned are (703)746-7239 for regular communications and (703)746-7238 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

Gregory Todd

Patent Examiner

Technology Center 2100

July 11, 2003



SALEH NAJJAR
PRIMARY EXAMINER